

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1603

By: Hickman

4
5 AS INTRODUCED

6 An Act relating to intoxicating beverages; amending
7 37 O.S. 2001, Sections 505, 521, as last amended by
8 Section 1, Chapter 73, O.S.L. 2006, 537, as last
9 amended by Section 1, Chapter 196, O.S.L. 2005 and
10 554 (37 O.S. Supp. 2006, Sections 521 and 537), which
11 relate to the Oklahoma Alcoholic Beverage Control
12 Act; removing obsolete language; authorizing
13 winemakers to sell wine at retail to consumers and to
14 ship wine, subject to certain restrictions and
15 requirements; requiring annual reports of sales and
16 shipments; providing penalties for knowingly
17 violating sale, shipping, and delivery restrictions
18 and requirements; authorizing winemakers to receive
19 orders in written and electronic form for delivery or
20 shipment of wine to consumers; modifying acts
21 prohibited pursuant to the Oklahoma Alcoholic
22 Beverage Control Act; modifying exceptions to the
23 excise tax levied on alcoholic beverages; amending 68
24 O.S. 2001, Section 1357, as last amended by Section
5, Chapter 44, 2nd Extraordinary Session, O.S.L. 2006
(68 O.S. Supp. 2006, Section 1357), which relates to
sales tax exemptions; adding exemption; repealing 37
O.S. 2001, Section 549, which relates to possession
of alcoholic beverages on which the excise tax has
not been paid; and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 37 O.S. 2001, Section 505, is
23 amended to read as follows:
24

1 Section 505. A. No person shall manufacture, rectify, sell,
2 possess, store, import into or export from this state, transport, or
3 deliver any alcoholic beverage except as specifically provided in
4 the Oklahoma Alcoholic Beverage Control Act. Provided, that nothing
5 herein shall prevent the possession and transportation of alcoholic
6 beverages for the personal use of the possessor, ~~his~~ or the family
7 and guests of the possessor, so long as the Oklahoma excise tax has
8 been paid thereon, except for beer. Provided, that nothing herein
9 shall prevent the making of cider or of wine, not to exceed two
10 hundred (200) gallons in any one (1) year pursuant to a license
11 first obtained from the Alcoholic Beverage Laws Enforcement
12 Commission, by simple fermentation and without distillation, if made
13 solely for the use of the maker, ~~his~~ or the family and guests of the
14 maker.

15 B. 1. Any duly licensed physician or dentist may possess and
16 use alcoholic beverages in the strict practice of ~~his~~ the profession
17 and any hospital or other institution caring for sick and diseased
18 persons may possess and use alcoholic beverages for the treatment of
19 bona fide patients of such hospital or institution. Any drugstore
20 employing a licensed pharmacist may possess and use alcoholic
21 beverages in the preparation of prescriptions of duly licensed
22 physicians.

23 2. The possession, transportation and dispensation of wine by
24 any authorized representative of any church for the conducting of a

1 bona fide rite or religious ceremony conducted by such church shall
2 not be prohibited by the Oklahoma Alcoholic Beverage Control Act;
3 nor shall said act prevent the sale, shipping or delivery of
4 sacramental wine by any person holding a sacramental wine supplier
5 license issued pursuant to the Oklahoma Alcoholic Beverage Control
6 Act to any religious corporation or society of this state holding a
7 valid exemption from taxation issued pursuant to Section 501(a) of
8 the Internal Revenue Code, 1954, and listed as an exempt
9 organization in Section 501(c)(3) of the Internal Revenue Code,
10 1954, of the United States, as amended.

11 3. Provided further, that nothing in the Oklahoma Alcoholic
12 Beverage Control Act shall prevent the possession, transportation
13 and sale of alcoholic beverages, including beer as defined by
14 Section 506 of this title and beer containing not more than three
15 and two-tenths percent (3.2%) of alcohol by weight, within military
16 reservations and in accordance with the laws, rules and regulations
17 governing such military reservations, provided that the Oklahoma
18 excise tax has been paid on spirits and wines.

19 C. 1. Except as otherwise authorized by law, it is unlawful
20 for any manufacturer, wholesaler or retailer of alcoholic beverages,
21 located and doing business from outside this state, to make retail
22 sales of alcoholic beverages to purchasers located in this state or
23 to ship alcoholic beverages sold at retail to persons located in
24 this state. ~~Any person who engages in the sale or shipping of~~

1 ~~alcoholic beverages in violation of the provisions of this~~
2 ~~subsection on or after the effective date of Section 20.1 of Title~~
3 ~~21 of the Oklahoma Statutes, upon conviction, shall be guilty of a~~
4 ~~Schedule G felony if the sale or delivery is made to a person under~~
5 ~~twenty one (21) years of age or misdemeanor if the sale or delivery~~
6 ~~is made to a person twenty one (21) years of age or older.~~

7 2. Any winemaker licensed or permitted pursuant to laws
8 regulating alcoholic beverages in any state, to sell wine at retail
9 to ultimate consumers in unopened containers, may ship into this
10 state wine by private common carrier approved by the ABLE
11 Commission, or sell for transport into this state, to a person
12 twenty-one (21) years or older. The wine shall not be resold. The
13 sale of the wine shall be considered to have taken place at the
14 winery. Any shipping container of wine so received in this state
15 shall be clearly labeled to indicate that the container shall not be
16 delivered to any person except the person who placed the order to
17 purchase the wine. Delivery shall require picture identification
18 stating date of birth of the recipient. The wine shall not be
19 delivered to a person visibly intoxicated. All out-of-state
20 winemakers originating shipments under this provision shall annually
21 submit a report to the ABLE Commission, in a form approved by the
22 Commission, of all sales and shipments in and to this state pursuant
23 to this paragraph, accompanied by evidence of permit or licensure
24 for the period of shipping reported.

1 3. Any person who engages in the sale ~~or~~, shipping, or delivery
2 of alcoholic beverages in violation of the provisions of this
3 subsection ~~before the effective date of Section 20.1 of Title 21 of~~
4 ~~the Oklahoma Statutes~~ who knowingly makes, participates in,
5 transports, imports or receives out-of-state shipments in violation
6 of this subsection shall be guilty of a felony punishable by
7 imprisonment for not more than five (5) years, if the sale,
8 shipment, or delivery is made to a person under twenty-one (21)
9 years of age, or a misdemeanor, if the sale or delivery is made to a
10 person twenty-one (21) years of age or older. Any person who fails
11 to submit the report required by paragraph 2 of this subsection
12 shall be guilty or a misdemeanor.

13 ~~2.~~ 4. The fine for a violation of this subsection shall be not
14 more than Five Thousand Dollars (\$5,000.00).

15 ~~3.~~ 5. In addition, if such person holds a license issued by the
16 Oklahoma Alcoholic Beverage Laws Enforcement Commission, the license
17 shall be revoked pursuant to Section 528 of this title.

18 6. Any person under twenty-one (21) years of age who
19 misrepresents that person's age for the purpose of inducing sale,
20 shipment, or delivery of wine to that person shall be guilty of a
21 misdemeanor and fined not more than Fifty Dollars (\$50.00). In
22 addition the privilege to operate a motor vehicle may be denied or
23 cancelled pursuant to subsection E of Section 538 of this title.

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1 SECTION 2. AMENDATORY 37 O.S. 2001, Section 521, as last
2 amended by Section 1, Chapter 73, O.S.L. 2006 (37 O.S. Supp. 2006,
3 Section 521), is amended to read as follows:

4 Section 521. A. A brewer license shall authorize the holder
5 thereof: To manufacture, bottle, package, and store beer on
6 licensed premises; to sell beer in this state to holders of Class B
7 wholesaler licenses and retail licenses and to sell beer out of this
8 state to qualified persons.

9 B. A distiller license shall authorize the holder thereof: To
10 manufacture, bottle, package, and store spirits on licensed
11 premises; to sell spirits in this state to licensed wholesalers and
12 manufacturers only; to sell spirits out of this state to qualified
13 persons; to purchase from licensed distillers and rectifiers in this
14 state, and import spirits from without this state for manufacturing
15 purposes in accordance with federal laws and regulations.

16 C. A winemaker license shall authorize the holder thereof: To
17 manufacture (including such mixing, blending and cellar treatment as
18 authorized by federal law), bottle, package, and store on licensed
19 premises wine containing not more than twenty-four percent (24%)
20 alcohol by volume, provided the bottle or package sizes authorized
21 shall be limited to the capacities approved by the United States
22 Bureau of Alcohol, Tobacco and Firearms or successor agency; to sell
23 wine in this state to licensed wholesalers and manufacturers,
24 provided, an Oklahoma winemaker may sell and ship wine produced at a

1 winery in this state directly to retail package stores and
2 restaurants in this state; to sell bottles of wine produced at the
3 winery from grapes and other fruits and berries grown in this state,
4 if available, to consumers on the premises of the winery; to receive
5 orders in both written and electronic form for wine produced at the
6 winery for delivery or shipment to consumers; to serve visitors on
7 the licensed premises samples of wine produced on the premises; to
8 serve samples of wine produced at the winery at festivals and trade
9 shows; to sell wine produced at the winery, in original sealed
10 containers, at festivals and trade shows; to sell wine out of this
11 state to qualified persons; to purchase and store wine, brandy and
12 fruit spirits from any licensed winemakers, distillers and
13 ~~rectifiers in this state, and to import into this state wine, brandy~~
14 ~~and fruit spirits~~ winemaker, distiller, and rectifier, for use in
15 manufacturing in accordance with federal laws and regulations.

16 D. A rectifier license shall authorize the holder thereof: To
17 rectify spirits and wines, bottle, package, and store same on the
18 licensed premises; to sell spirits and wines in this state to
19 licensed wholesalers and manufacturers only; to sell spirits and
20 wines out of this state to qualified persons; to purchase from
21 licensed manufacturers in this state; and to import into this state
22 for manufacturing purposes spirits and wines in accordance with
23 federal laws and regulations.

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1 E. A wholesaler license shall authorize the holder thereof: To
2 purchase and import into this state spirits and wines from persons
3 authorized to sell same who are the holders of a nonresident seller
4 license, and their agents who are the holders of manufacturers agent
5 licenses; to purchase spirits and wines from licensed distillers,
6 rectifiers, winemakers and wholesalers in this state; to sell
7 spirits and wines in retail containers in this state to retailers,
8 mixed beverage, caterer, special event, hotel beverage or
9 airline/railroad beverage licensees; to sell spirits and wines to
10 wholesalers authorized to sell same; and to sell spirits and wines
11 out of this state to qualified persons. Provided, however, sales of
12 spirits and wine in containers with a capacity of less than one-
13 twentieth (1/20) gallon by a holder of a wholesaler license shall be
14 in full case lots and in the original unbroken case. Wholesalers
15 shall be authorized to place such signs outside their place of
16 business as are required by Acts of Congress and by such laws and
17 regulations promulgated under such Acts.

18 A wholesaler license shall authorize the holder thereof to
19 operate a single bonded warehouse with a single central office
20 together with delivery facilities at a location in this state only
21 at the principal place of business for which the wholesaler license
22 was granted.

23 F. A Class B wholesaler license shall authorize the holder
24 thereof: To purchase and import into this state beer from persons

1 authorized to sell same who are the holders of nonresident seller
2 licenses, and their agents who are the holders of manufacturers
3 agent licenses; to purchase beer from licensed brewers and Class B
4 wholesalers in this state; to sell in retail containers to
5 retailers, mixed beverage, caterer, special event, hotel beverage
6 and airline/railroad beverage licensees in this state, beer which
7 has been unloaded and stored at the holder's self-owned or leased
8 and self-operated warehouse facilities for a period of at least
9 twenty-four (24) hours before such sale; and to sell beer in this
10 state to Class B wholesalers and out of this state to qualified
11 persons, including federal instrumentalities and voluntary
12 associations of military personnel on federal enclaves in this state
13 over which this state has ceded jurisdiction.

14 G. A package store license shall authorize the holder thereof:
15 To purchase alcohol, spirits, beer and wine in retail containers
16 from the holder of a brewer, wholesaler or Class B wholesaler
17 license and to purchase wine produced at a winery in this state from
18 an Oklahoma winemaker and to sell same on the licensed premises in
19 such containers to consumers for off-premises consumption only and
20 not for resale; provided, wine may be sold to charitable
21 organizations that are holders of charitable auction or charitable
22 wine event licenses. All alcoholic beverages that are sold by a
23 package store are to be sold at ordinary room temperature.

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1 H. A mixed beverage license shall authorize the holder thereof:
2 To purchase alcohol, spirits, beer or wine in retail containers from
3 the holder of a wholesaler or Class B wholesaler license or as
4 specifically provided by law and to sell, offer for sale and possess
5 mixed beverages for on-premises consumption only; provided, the
6 holder of a mixed beverage license issued for an establishment which
7 is also a restaurant may purchase wine produced at wineries in this
8 state directly from an Oklahoma winemaker as provided in Section 3
9 of Article XXVIII of the Oklahoma Constitution.

10 Sales and service of mixed beverages by holders of mixed
11 beverage licenses shall be limited to the licensed premises of the
12 licensee unless the holder of the mixed beverage license also
13 obtains a caterer license or a mixed beverage/caterer combination
14 license. A mixed beverage license shall only be issued in counties
15 of this state where the sale of alcoholic beverages by the
16 individual drink for on-premises consumption has been authorized. A
17 separate license shall be required for each place of business. No
18 mixed beverage license shall be issued for any place of business
19 functioning as a motion picture theater, as defined by Section 506
20 of this title.

21 I. A bottle club license shall authorize the holder thereof:
22 To store, possess and mix alcoholic beverages belonging to members
23 of the club and to serve such alcoholic beverages for on-premises
24 consumption to club members. A bottle club license shall only be

1 issued in counties of this state where the sale of alcoholic
2 beverages by the individual drink for on-premises consumption has
3 not been authorized. A separate license shall be required for each
4 place of business.

5 J. A caterer license shall authorize the holder thereof: To
6 sell mixed beverages for on-premises consumption incidental to the
7 sale or distribution of food at particular functions, occasions, or
8 events which are temporary in nature. A caterer license shall not
9 be issued in lieu of a mixed beverage license. A caterer license
10 shall only be issued in counties of this state where the sale of
11 alcoholic beverages by the individual drink for on-premises
12 consumption has been authorized. A separate license shall be
13 required for each place of business.

14 K. 1. An annual special event license shall authorize the
15 holder thereof: To sell and distribute mixed beverages for
16 consumption on the premises for which the license has been issued
17 for up to four events to be held over a period not to exceed one (1)
18 year, not to exceed two such events in any three-month period. For
19 purposes of this paragraph, an event shall not exceed a period of
20 ten (10) consecutive days. An annual special event license shall
21 only be issued in counties of this state where the sale of alcoholic
22 beverages by the individual drink for on-premises consumption has
23 been authorized. The holder of an annual special event license

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1 shall provide written notice to the ABLE Commission of each special
2 event not less than ten (10) days before the event is held.

3 2. A quarterly special event license shall authorize the holder
4 thereof: To sell and distribute mixed beverages for consumption on
5 the premises for which the license has been issued for up to three
6 events to be held over a period not to exceed three (3) months. For
7 purposes of this paragraph, an event shall not exceed a period of
8 ten (10) consecutive days. A quarterly special event license shall
9 only be issued in counties of this state where the sale of alcoholic
10 beverages by the individual drink for on-premises consumption has
11 been authorized. The holder of a quarterly special event license
12 shall provide written notice to the ABLE Commission of each special
13 event not less than ten (10) days before the event is held.

14 L. A hotel beverage license shall authorize the holder thereof:
15 To sell or serve alcoholic beverages in 50 milliliter spirits, 187
16 milliliter wine, and 12-ounce malt beverage containers which are
17 distributed from a hotel room mini-bar. A hotel beverage license
18 shall only be issued in counties of this state where the sale of
19 alcoholic beverages by the individual drink for on-premises
20 consumption has been authorized. A hotel beverage license shall
21 only be issued to a hotel or motel as defined by Section 506 of this
22 title which is also the holder of a mixed beverage license.
23 Provided, that application may be made simultaneously for both such
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1 licenses. A separate license shall be required for each place of
2 business.

3 M. An airline/railroad beverage license shall authorize the
4 holder thereof: To sell or serve alcoholic beverages in or from any
5 size container on a commercial passenger airplane or railroad
6 operated in compliance with a valid license, permit or certificate
7 issued under the authority of the United States or this state, even
8 though the airplane or train, in the course of its travel, may cross
9 an area in which the sale of alcoholic beverages by the individual
10 drink is not authorized and to store alcoholic beverages in sealed
11 containers of any size at any airport or station regularly served by
12 the licensee, in accordance with rules promulgated by the Alcoholic
13 Beverage Laws Enforcement Commission. Alcoholic beverages purchased
14 by the holder of an airline/railroad license from the holder of a
15 wholesaler license shall be presumed to be purchased for consumption
16 outside the State of Oklahoma or in interstate commerce, and shall
17 be exempt from the excise tax provided for in Section 553 of this
18 title.

19 N. An agent license shall authorize the holder thereof: To
20 represent only the holders of licenses within this state, other than
21 retailers, authorized to sell alcoholic beverages to retail dealers
22 in Oklahoma, and to solicit and to take orders for the purchase of
23 alcoholic beverages from retailers including licensees authorized to
24 sell alcoholic beverages by the individual drink for on-premises

1 consumption. Such license shall be issued only to agents and
2 employees of the holder of a license under the Oklahoma Alcoholic
3 Beverage Control Act, Section 502 et seq. of this title but no such
4 license shall be required of an employee making sales of alcoholic
5 beverages on licensed premises of the employee's principal. No
6 person holding an agent license shall be entitled to a manufacturers
7 agent license.

8 O. An employee license shall authorize the holder thereof: To
9 work in a package store, mixed beverage establishment, bottle club,
10 or any establishment where alcohol or alcoholic beverages are sold,
11 mixed, or served. Persons employed by a mixed beverage licensee or
12 a bottle club who do not participate in the service, mixing, or sale
13 of mixed beverages shall not be required to have an employee
14 license. Provided, however, that a manager employed by a mixed
15 beverage licensee or a bottle club shall be required to have an
16 employee license whether or not the manager participates in the
17 service, mixing or sale of mixed beverages. Applicants for an
18 employee license must have a health card issued by the county in
19 which they are employed, if the county issues such a card.

20 Employees of special event, caterer or airline/railroad beverage
21 licensees shall not be required to obtain an employee license.

22 Persons employed by a hotel licensee who participate in the stocking
23 of hotel room mini-bars or in the handling of alcoholic beverages to
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1 be placed in such devices shall be required to have an employee
2 license.

3 P. An industrial license may be issued to persons desiring to
4 import, transport, and use alcohol for the following purposes:

5 1. Manufacture of patent, proprietary, medicinal,
6 pharmaceutical, antiseptic, and toilet preparations;

7 2. Manufacture of extracts, syrups, condiments, and food
8 products; and

9 3. For use in scientific, chemical, mechanical, industrial, and
10 medicinal products and purposes.

11 No other provisions of the Oklahoma Alcoholic Beverage Control
12 Act shall apply to alcohol intended for industrial, medical,
13 mechanical, or scientific use.

14 Any person receiving alcohol under authority of an industrial
15 license who shall use, permit, or cause same to be used for purposes
16 other than authorized purposes specified above, and all such
17 alcohol, shall be liable to all provisions of the Oklahoma Alcoholic
18 Beverage Control Act, including payment of tax thereon.

19 No provisions of the Oklahoma Alcoholic Beverage Control Act
20 shall apply to alcohol withdrawn by any person free of federal tax
21 under a tax-free permit issued by the United States government, if
22 such alcohol is received, stored, and used as authorized by federal
23 laws.

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1 Q. A carrier license may be issued to any common carrier
2 operating under a certificate of convenience and necessity issued by
3 any duly authorized federal or state regulatory agency. Such
4 license shall authorize the holder thereof to transport alcoholic
5 beverages into, within, and out of this state under such terms,
6 conditions, limitations, and restrictions as the ABLE Commission may
7 prescribe by order issuing such license and by regulations.

8 R. A private carrier license may be issued to any carrier other
9 than a common carrier described in subsection P of this section.
10 Such license shall authorize the holder thereof to transport
11 alcoholic beverages into, within, or out of this state under such
12 terms, conditions, limitations, and restrictions as the ABLE
13 Commission may prescribe by order issuing such license and by
14 regulations. No carrier license or private carrier license shall be
15 required of licensed brewers, distillers, winemakers, rectifiers,
16 wholesalers, or Class B wholesalers, to transport alcoholic
17 beverages from the place of purchase or acquisition to the licensed
18 premises of such licensees and from such licensed premises to the
19 licensed premises of the purchaser in vehicles owned or leased by
20 such licensee when such transportation is for a lawful purpose and
21 not for hire.

22 No carrier license or private carrier license shall be required
23 of the holder of a package store, mixed beverage, caterer, special
24 event, hotel beverage or airline/railroad license to pick up

1 alcoholic beverage orders from the licensees' wholesaler or Class B
2 wholesaler from whom they are purchased, and to transport such
3 alcoholic beverages from the place of purchase or acquisition to the
4 licensed premise of such licensees in vehicles owned or under the
5 control of such licensee or a licensed employee of such licensee
6 under such terms, conditions, limitations and restrictions as the
7 ABLE Commission may prescribe.

8 S. A bonded warehouse license shall authorize the holder
9 thereof: To receive and store alcoholic beverages for the holders
10 of storage licenses on the licensed premises of the bonded warehouse
11 licensee. No goods, wares or merchandise other than alcoholic
12 beverages may be stored in the same bonded warehouse with alcoholic
13 beverages. The holder of a bonded warehouse license shall furnish
14 and file with the ABLE Commission a bond running to all bailers of
15 alcoholic beverages under proper storage licenses and their
16 assignees (including mortgagees or other bona fide lienholders)
17 conditioned upon faithful performance of the terms and conditions of
18 such bailments.

19 T. A storage license may be issued to a holder of a brewer,
20 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,
21 nonresident seller, package store, mixed beverage, caterer, or hotel
22 beverage license, and shall authorize the holder thereof: To store
23 alcoholic beverages in a public warehouse holding a bonded warehouse
24 license, and no goods, wares or merchandise other than alcoholic

1 beverages may be stored in the same warehouse with alcoholic
2 beverages in private warehouses owned or leased and operated by such
3 licensees elsewhere than on their licensed premises. Provided:

4 1. A storage license issued to a Class B wholesaler shall
5 permit the storage of light beer and permit the sale and delivery to
6 retailers from the premises covered by such license;

7 2. Any licensee who is the holder of a mixed beverage/caterer
8 combination license or the holder of a mixed beverage license and a
9 hotel beverage license who is issued a storage license shall store
10 all inventories of alcoholic beverages either on the premises of the
11 mixed beverage establishment or in the warehouse;

12 3. A storage license shall not be required for a special event
13 licensee storing alcoholic beverages for use at a subsequent event;
14 and

15 4. Notwithstanding the provisions of subsection H of this
16 section or any other provision of this title, a licensee who wholly
17 owns more than one licensed mixed beverage establishment may store
18 alcoholic beverages for each of the licensed establishments in one
19 location under one storage license. Alcoholic beverages purchased
20 and stored pursuant to the provisions of a storage license, for one
21 licensed mixed beverage establishment may be transferred by a
22 licensee to another licensed mixed beverage establishment which is
23 wholly owned by the same licensee. Notice of such a transfer shall
24 be given in writing to the Oklahoma Tax Commission and the ABLE

1 Commission within three (3) business days of the transfer. The
2 notice shall clearly show the quantity, brand and size of every
3 transferred bottle or case.

4 U. A sacramental wine supplier license shall authorize the
5 holder thereof: To sell, ship or deliver sacramental wine to any
6 religious corporation or society of this state holding a valid
7 exemption from taxation issued pursuant to Section 501(a) of the
8 Internal Revenue Code, 1986, and listed as an exempt organization in
9 Section 501(c)(3) of the Internal Revenue Code, 1986, of the United
10 States, as amended.

11 V. A beer and wine license shall authorize the holder thereof:
12 To purchase beer and wine in retail containers from the holder of a
13 wholesaler or Class B wholesaler license or as specifically provided
14 by law and to sell, offer for sale and possess beer and wine for on-
15 premises consumption only; provided, the holder of a beer and wine
16 license issued for an establishment which is also a restaurant may
17 purchase wine produced at wineries in this state directly from an
18 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the
19 Oklahoma Constitution.

20 Sales and service of beer and wine by holders of beer and wine
21 licenses shall be limited to the licensed premises of the licensee
22 unless the holder of the beer and wine license also obtains a
23 caterer license. A beer and wine license shall only be issued in
24 counties of this state where the sale of alcoholic beverages by the

1 individual drink for on-premises consumption has been authorized. A
2 separate license shall be required for each place of business. No
3 beer and wine license shall be issued for any place of business
4 functioning as a motion picture theater, as defined by Section 506
5 of this title. No spirits shall be stored, possessed or consumed on
6 the licensed premises of a beer and wine licensee.

7 W. A charitable auction or charitable wine event license may be
8 issued to a charitable organization exempt from taxation under
9 Section 501(c)(3), (4), (5), (7), (8), (9), (10), or (19) of the
10 United States Internal Revenue Code. The charitable wine event
11 license shall authorize the holder thereof to conduct a wine event
12 which may consist of one or more of a wine tasting event, a wine
13 dinner event or a wine auction, which may be either a live auction
14 conducted by an auctioneer or a silent auction for which:

15 1. Bid sheets are accepted from interested bidders at the
16 event;

17 2. The holders of tickets are allowed to bid online for a
18 period not exceeding thirty (30) days prior to the event; or

19 3. Both bid sheets are accepted at the event and online bids
20 are accepted pursuant to paragraph 2 of this subsection.

21 A charitable wine event shall be conducted solely to raise funds
22 for charitable purposes. Wine used in, served, or consumed at a
23 charitable wine event may be purchased by the charitable
24 organization or donated by any person or entity. The charitable

1 wine event license shall be issued for a period not exceeding four
2 (4) days. Only one such license may be issued to an organization in
3 any twelve-month period. The charitable organization holding a
4 charitable wine event license shall not be required to obtain a
5 special event license. The charitable auction license shall
6 authorize the holder thereof to auction wine purchased from a retail
7 package store or received as a gift from an individual if the
8 auction is conducted to raise funds for charitable purposes. The
9 charitable auction license shall be issued for a period not to
10 exceed two (2) days. Only one such license shall be issued to an
11 organization in any twelve-month period. The maximum amount of wine
12 auctioned pursuant to the charitable auction license shall not
13 exceed fifty (50) gallons. All wines auctioned pursuant to the
14 charitable auction license shall be registered and all fees and
15 taxes shall be paid in accordance with the Oklahoma Alcoholic
16 Beverage Control Act.

17 X. A mixed beverage/caterer combination license shall authorize
18 the holder thereof: To purchase or sell mixed beverages as
19 specifically provided by law for the holder of a mixed beverage
20 license or a caterer license. All provisions of the Oklahoma
21 Alcoholic Beverage Control Act applicable to mixed beverage licenses
22 or caterer licenses, or the holders thereof, shall also be
23 applicable to mixed beverage/caterer combination licenses or the
24 holders thereof, except where specifically otherwise provided. A

1 mixed beverage/caterer combination license shall only be issued in
2 counties of this state where the sale of alcoholic beverages by the
3 individual drink for on-premises consumption has been authorized. A
4 separate license shall be required for each place of business.

5 SECTION 3. AMENDATORY 37 O.S. 2001, Section 537, as last
6 amended by Section 1, Chapter 196, O.S.L. 2005 (37 O.S. Supp. 2006,
7 Section 537), is amended to read as follows:

8 Section 537. A. No person shall:

- 9 1. Knowingly sell, deliver, or furnish alcoholic beverages to
10 any person under twenty-one (21) years of age;
- 11 2. Sell, deliver or knowingly furnish alcoholic beverages to an
12 intoxicated person or to any person who has been adjudged insane or
13 mentally deficient;
- 14 3. Open a retail container or consume alcoholic beverages on
15 the premises of a retail package store;
- 16 4. Import into this state, except as provided for in the
17 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
18 provided, that nothing herein shall prohibit the importation or
19 possession for personal use of not more than one (1) liter of
20 alcoholic beverages, except wine, upon which the Oklahoma excise tax
21 is delinquent;
- 22 5. Receive, possess, or use any alcoholic beverage in violation
23 of the provisions of the Oklahoma Alcoholic Beverage Control Act;

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1 6. Transport into, within, or through this state more than one
2 (1) liter of alcoholic beverages upon which the Oklahoma excise tax
3 has not been paid unless the person accompanying or in charge of the
4 vehicle transporting same shall possess a true copy of a bill of
5 lading, invoice, manifest or other document particularly identifying
6 the alcoholic beverages being transported and showing the name and
7 address of the consignor and consignee;

8 7. Knowingly transport in any vehicle upon a public highway,
9 street or alley any alcoholic beverage except in the original
10 container which shall not have been opened and the seal upon which
11 shall not have been broken and from which the original cap or cork
12 shall not have been removed, unless the opened container be in the
13 rear trunk or rear compartment, which shall include the spare tire
14 compartment in a vehicle commonly known as a station wagon and panel
15 truck, or any outside compartment which is not accessible to the
16 driver or any other person in the vehicle while it is in motion;

17 8. Drink intoxicating liquor in public except on the premises
18 of a licensee of the Alcoholic Beverage Laws Enforcement Commission
19 who is authorized to sell or serve alcoholic beverages by the
20 individual drink or be intoxicated in a public place. This
21 provision shall be cumulative and in addition to existing law;

22 9. Forcibly resist lawful arrest, or by physical contact
23 interfere with an investigation of any infringement of the Oklahoma
24 Alcoholic Beverage Control Act or with any lawful search or seizure

1 being made by an inspector or agent of the ABLE Commission, when
2 such person knows or should know that such acts are being performed
3 by a state, county, or municipal officer, inspector or agent of the
4 ABLE Commission;

5 10. Manufacture, duplicate, counterfeit or in any way imitate
6 any bottle club membership card required to be issued by the ABLE
7 Commission without the permission of the Commission;

8 11. Consume or possess alcoholic beverages on the licensed
9 premises of a bottle club unless such person possesses a valid
10 membership card for that club issued by the club; or

11 12. Knowingly possess any bottle club membership card required
12 to be issued by the ABLE Commission, which has been manufactured,
13 counterfeited, imitated or in any way duplicated without the
14 permission of the Commission.

15 B. No licensee of the ABLE Commission shall:

16 1. Receive, possess, or sell any alcoholic beverage except as
17 authorized by the Oklahoma Alcoholic Beverage Control Act and by the
18 license or permit which the licensee holds;

19 2. Employ any person under the age of twenty-one (21) in the
20 selling or handling of alcoholic beverages. Provided, that a mixed
21 beverage, beer and wine, caterer, special event or bottle club
22 licensee may employ servers who are at least eighteen (18) years of
23 age, except persons under twenty-one (21) years of age may not serve
24 in designated bar or lounge areas, and a mixed beverage, beer and

1 wine, caterer, special event or bottle club licensee may employ or
2 hire musical bands who have musicians who are under twenty-one (21)
3 years of age if each such musician is either accompanied by a parent
4 or legal guardian or has on their person, to be made available for
5 inspection upon demand by any ABLE Commission officer or law
6 enforcement officer, a written, notarized affidavit from the parent
7 or legal guardian giving the underage musician permission to perform
8 in designated bar or lounge areas;

9 3. Give any alcoholic beverage as a prize, premium or
10 consideration for any lottery, game of chance or skill or any type
11 of competition;

12 4. Advertise or offer "happy hours" or any other means or
13 inducements to stimulate the consumption of alcoholic beverages
14 including:

15 a. deliver more than two drinks to one person at one
16 time;

17 b. sell or offer to sell to any person or group of
18 persons any drinks at a price less than the price
19 regularly charged for such drinks during the same
20 calendar week, except at private functions not open to
21 the public;

22 c. sell or offer to sell to any person an unlimited
23 number of drinks during any set period of time for a
24

1 fixed price, except at private functions not open to
2 the public;

3 d. sell or offer to sell drinks to any person or group of
4 persons on any one day at prices less than those
5 charged the general public on that day, except at
6 private functions not open to the public;

7 e. increase the volume of alcoholic beverages contained
8 in a drink without increasing proportionately the
9 price regularly charged for such drink during the same
10 calendar week; or

11 f. encourage or permit, on the licensed premises, any
12 game or contest which involves drinking or the
13 awarding of drinks as prizes.

14 Provided that the provisions of this paragraph shall not prohibit
15 the advertising or offering of food or entertainment in licensed
16 establishments;

17 5. Permit or allow any patron or person to exit the licensed
18 premises with an open container of any alcoholic beverage.

19 Provided, that this prohibition shall not be applicable to closed
20 original containers of alcoholic beverages which are carried from
21 the licensed premises of a bottle club by a patron, closed original
22 wine containers removed from the premises of restaurants, hotels,
23 and motels, or to closed original containers of alcoholic beverages

1 transported to and from the place of business of a licensed caterer
2 by the caterer or an employee of the caterer; or

3 6. Serve or sell alcoholic beverages with an expired license
4 issued by the ABLE Commission.

5 C. No package store licensee shall:

6 1. Purchase or receive any alcoholic beverage other than from a
7 person holding a brewer, wholesaler or Class B wholesaler license
8 issued pursuant to the Oklahoma Alcoholic Beverage Control Act;

9 2. Suffer or permit any retail container to be opened, or any
10 alcoholic beverage to be consumed, on the licensed premises;

11 3. Sell, or keep package store premises open for the purpose of
12 selling, any alcoholic beverages at any hour other than between the
13 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,
14 that no such sales shall be made, or package store premises be
15 allowed to remain open for the purpose of making such sales, on the
16 day of any General, Primary, Runoff Primary or Special Election
17 while the polls are open whether on a national, state, county or
18 city election or on New Year's Day, Memorial Day, the Fourth of
19 July, Labor Day, Thanksgiving Day or Christmas Day;

20 4. Operate a retail package store unless such store shall be
21 located in a city or town having a population in excess of two
22 hundred (200) according to the latest Federal Decennial Census;

23 5. Sell any alcoholic beverage on credit; provided that
24 acceptance by a retail liquor store of a cash or debit card, or a

1 nationally recognized credit card, in lieu of actual cash payment
2 does not constitute the extension of credit; provided further, as
3 used in this section:

4 a. "cash or debit card" means any instrument or device
5 whether known as a debit card or by any other name,
6 issued with or without fee by an issuer for the use of
7 the cardholder in depositing, obtaining or
8 transferring funds from a consumer banking electronic
9 facility,

10 b. "nationally recognized credit card" means any
11 instrument or device, whether known as a credit card,
12 credit plate, charge plate or by any other name,
13 issued with or without fee by an issuer for the use of
14 the cardholder in obtaining money, goods, services or
15 anything else of value on credit which is accepted by
16 over one hundred merchants;

17 6. Offer or furnish any prize, premium, gift or similar
18 inducement to a consumer in connection with the sale of alcoholic
19 beverage, except that goods or merchandise included by the
20 manufacturer in packaging with alcoholic beverages or for packaging
21 with alcoholic beverages shall not be included in this prohibition,
22 but no wholesaler or package store shall sell any alcoholic beverage
23 prepackaged with other goods or merchandise at a price which is
24

1 greater than the price at which the alcoholic beverage alone is
2 sold;

3 7. Permit any person under twenty-one (21) years of age to
4 enter into, remain within or loiter about the licensed premises; or

5 8. Pay for alcoholic beverages by a check or draft which is
6 dishonored by the drawee when presented to such drawee for payment;
7 and the ABLE Commission may cancel or suspend the license of any
8 retailer who has given a check or draft, as maker or endorser, which
9 is so dishonored upon presentation.

10 D. No wholesaler licensee shall:

11 1. Sell or deliver any amount of spirits or wines to any
12 package store licensee on Saturday or Sunday; or

13 2. Sell or deliver any amount of spirits or wines to any
14 package store licensee on New Year's Day, Memorial Day, the Fourth
15 of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day.

16 E. No mixed beverage or beer and wine licensee shall:

17 1. Purchase or receive any alcoholic beverage other than from a
18 person holding a wholesaler or Class B wholesaler license issued
19 pursuant to the Oklahoma Alcoholic Beverage Control Act; provided, a
20 mixed beverage or beer and wine licensee whose premises are a
21 restaurant may purchase wine produced at wineries in this state
22 directly from an Oklahoma winemaker as provided in Section 3 of
23 Article XXVIII of the Oklahoma Constitution;

24

1 2. Transport alcoholic beverages from the place of purchase to
2 the licensed premises unless the licensee also holds a private
3 carrier license issued by the ABLE Commission;

4 3. Use or allow the use of any mark or label on a container of
5 alcoholic beverage which is kept for sale which does not clearly and
6 precisely indicate the nature of the contents or which might deceive
7 or conceal the nature, composition, quantity, age or quality of such
8 beverage;

9 4. Keep or knowingly permit any alcoholic beverage to be kept,
10 brought or consumed on the licensed premises which is not allowed to
11 be sold or served upon such premises; or

12 5. Allow any person under twenty-one (21) years of age to enter
13 into, remain within or loiter about the designated bar area of the
14 licensed premises, except for members of a musical band employed or
15 hired as provided in paragraph 2 of subsection B of this section
16 when the band is to perform within such area.

17 The prohibition in this subsection against persons under twenty-
18 one (21) years of age entering or remaining within the designated
19 bar area of the licensed premises shall not apply, if the licensed
20 premises are closed to the public during a time the premises are
21 legally permitted to be open for business and the premises are used
22 for a private party at which alcoholic beverages may be served to
23 persons twenty-one (21) years of age or older. Any alcoholic
24 beverages served at a private party on the licensed premises may be

1 purchased from the licensee at a negotiated price or purchased
2 privately and served at the private party on the licensed premises.
3 Any licensee who desires to conduct such a private party shall
4 notify the ABLE Commission, in writing, at least ten (10) calendar
5 days prior to the private party. The notification shall include the
6 date, time, and purpose of the private party and any other
7 information the ABLE Commission may deem necessary.

8 F. No bottle club licensee shall:

9 1. Use or allow the use of any mark or label on a container of
10 alcoholic beverage which does not clearly and precisely indicate the
11 nature of the contents or which might deceive or conceal the nature,
12 composition, quantity, age or quality of any such beverage;

13 2. Act as an agent for any bottle club member and purchase any
14 alcoholic beverage for the member;

15 3. Use or allow the use of any pool system of storage or
16 purchase of alcoholic beverages;

17 4. Allow any person to enter or remain in the designated bar or
18 lounge area of the club unless that person possesses a valid
19 membership card for that club issued by the club;

20 5. Sell any alcoholic beverage;

21 6. Deliver or furnish to any club member any alcoholic beverage
22 that does not belong to the member;

23 7. Serve alcoholic beverages to any person who does not possess
24 a valid membership card for that club issued by the club;

1 8. Issue a membership card for the club to a person under
2 twenty-one (21) years of age; or

3 9. Allow any person under twenty-one (21) years of age to enter
4 into, remain within or loiter about the designated bar area of the
5 licensed premises, except for members of a musical band employed or
6 hired as provided in paragraph 2 of subsection B of this section
7 when the band is to perform within such area.

8 The prohibition in this subsection against persons under twenty-
9 one (21) years of age entering or remaining within the designated
10 bar area of the licensed premises shall not apply, if the licensed
11 premises are closed to the public during a time the premises are
12 legally permitted to be open for business and the premises are used
13 for a private party at which alcoholic beverages may be served to
14 persons twenty-one (21) years of age or older. Any alcoholic
15 beverages served at a private party on the licensed premises may be
16 purchased from the licensee at a negotiated price or purchased
17 privately and served at the private party on the licensed premises.
18 Any licensee who desires to conduct such a private party shall
19 notify the ABLE Commission, in writing, at least ten (10) calendar
20 days prior to the private party. The notification shall include the
21 date, time, and purpose of the private party and any other
22 information the ABLE Commission may deem necessary.

23 G. No special event or caterer licensee shall:
24

1 1. Purchase or receive any alcoholic beverage other than from a
2 person holding a wholesaler or Class B wholesaler license issued
3 pursuant to the provisions of the Oklahoma Alcoholic Beverage
4 Control Act; provided, a special event or caterer licensee may
5 purchase wine produced at wineries in this state directly from an
6 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the
7 Oklahoma Constitution; or

8 2. Transport alcoholic beverages from the place of purchase to
9 the licensed premises unless the licensee also holds a private
10 carrier license issued by the ABLE Commission.

11 H. No person operating a cafe, restaurant, club, or any place
12 of recreation shall permit any person to be drunk or intoxicated in
13 the person's place of business.

14 SECTION 4. AMENDATORY 37 O.S. 2001, Section 554, is
15 amended to read as follows:

16 Section 554. A. The excise tax levied by Section 553 of this
17 title shall not apply to:

18 1. Alcohol used exclusively for industrial purposes by the
19 holder of an industrial license;

20 2. Alcohol lawfully withdrawn and used free of tax under a
21 tax-free permit issued by the United States government;

22 3. Alcoholic beverages used exclusively by licensed physicians
23 and dentists in the bona fide practice of their professions or by
24 licensed pharmacists in compounding prescriptions;

1 4. Cider and wine made for personal use, as provided in Section
2 505 of this title;

3 5. Wine used exclusively for sacramental purposes in bona fide
4 religious ceremonies; and

5 6. Alcoholic beverages, not exceeding one (1) liter, imported
6 into this state by the possessor for his own personal use;

7 7. Wine imported into this state by the possessor for the
8 personal use of the possessor; and

9 8. Internet sales of wine.

10 B. As a condition precedent to the allowance of any exemption
11 authorized by subsection A of this section:

12 1. Where a license or permit is required by the Oklahoma
13 Alcoholic Beverage Control Act, for such use, the person claiming
14 any such exemption must have obtained from the Alcoholic Beverage
15 Laws Enforcement Commission the license or permit authorizing such
16 exempt use; and

17 2. There must be furnished such proof of the exclusive use for
18 such exempt purposes as the Oklahoma Tax Commission may require.

19 SECTION 5. AMENDATORY 68 O.S. 2001, Section 1357, as
20 last amended by Section 5, Chapter 44, 2nd Extraordinary Session,
21 O.S.L. 2006 (68 O.S. Supp. 2006, Section 1357), is amended to read
22 as follows:

23 Section 1357. Exemptions - General.
24

1 There are hereby specifically exempted from the tax levied by
2 the Oklahoma Sales Tax Code:

3 1. Transportation of school pupils to and from elementary
4 schools or high schools in motor or other vehicles;

5 2. Transportation of persons where the fare of each person does
6 not exceed One Dollar (\$1.00), or local transportation of persons
7 within the corporate limits of a municipality except by taxicabs;

8 3. Sales for resale to persons engaged in the business of
9 reselling the articles purchased, whether within or without the
10 state, provided that such sales to residents of this state are made
11 to persons to whom sales tax permits have been issued as provided in
12 the Oklahoma Sales Tax Code. This exemption shall not apply to the
13 sales of articles made to persons holding permits when such persons
14 purchase items for their use and which they are not regularly
15 engaged in the business of reselling; neither shall this exemption
16 apply to sales of tangible personal property to peddlers, solicitors
17 and other salespersons who do not have an established place of
18 business and a sales tax permit. The exemption provided by this
19 paragraph shall apply to sales of motor fuel or diesel fuel to a
20 Group Five vendor, but the use of such motor fuel or diesel fuel by
21 the Group Five vendor shall not be exempt from the tax levied by the
22 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
23 is exempt from sales tax when the motor fuel is for shipment outside
24 this state and consumed by a common carrier by rail in the conduct

1 of its business. The sales tax shall apply to the purchase of motor
2 fuel or diesel fuel in Oklahoma by a common carrier by rail when
3 such motor fuel is purchased for fueling, within this state, of any
4 locomotive or other motorized flanged wheel equipment;

5 4. Sales of advertising space in newspapers and periodicals;

6 5. Sales of programs relating to sporting and entertainment
7 events, and sales of advertising on billboards (including signage,
8 posters, panels, marquees, or on other similar surfaces, whether
9 indoors or outdoors) or in programs relating to sporting and
10 entertainment events, and sales of any advertising, to be displayed
11 at or in connection with a sporting event, via the Internet,
12 electronic display devices, or through public address or broadcast
13 systems. The exemption authorized by this paragraph shall be
14 effective for all sales made on or after January 1, 2001;

15 6. Sales of any advertising, other than the advertising
16 described by paragraph 5 of this section, via the Internet,
17 electronic display devices, or through the electronic media,
18 including radio, public address or broadcast systems, television
19 (whether through closed circuit broadcasting systems or otherwise),
20 and cable and satellite television, and the servicing of any
21 advertising devices;

22 7. Eggs, feed, supplies, machinery and equipment purchased by
23 persons regularly engaged in the business of raising worms, fish,
24 any insect or any other form of terrestrial or aquatic animal life

1 and used for the purpose of raising same for marketing. This
2 exemption shall only be granted and extended to the purchaser when
3 the items are to be used and in fact are used in the raising of
4 animal life as set out above. Each purchaser shall certify, in
5 writing, on the invoice or sales ticket retained by the vendor that
6 the purchaser is regularly engaged in the business of raising such
7 animal life and that the items purchased will be used only in such
8 business. The vendor shall certify to the Oklahoma Tax Commission
9 that the price of the items has been reduced to grant the full
10 benefit of the exemption. Violation hereof by the purchaser or
11 vendor shall be a misdemeanor;

12 8. Sale of natural or artificial gas and electricity, and
13 associated delivery or transmission services, when sold exclusively
14 for residential use. Provided, this exemption shall not apply to
15 any sales tax levied by a city or town, or a county, or any other
16 jurisdiction in this state;

17 9. In addition to the exemptions authorized by Section 1357.6
18 of this title, sales of drugs sold pursuant to a prescription
19 written for the treatment of human beings by a person licensed to
20 prescribe the drugs, and sales of insulin and medical oxygen.
21 Provided, this exemption shall not apply to over-the-counter drugs;

22 10. Transfers of title or possession of empty, partially
23 filled, or filled returnable oil and chemical drums to any person
24 who is not regularly engaged in the business of selling, reselling

1 or otherwise transferring empty, partially filled, or filled
2 returnable oil drums;

3 11. Sales of one-way utensils, paper napkins, paper cups,
4 disposable hot containers and other one-way carry out materials to a
5 vendor of meals or beverages;

6 12. Sales of food or food products for home consumption which
7 are purchased in whole or in part with coupons issued pursuant to
8 the federal food stamp program as authorized by Sections 2011
9 through 2029 of Title 7 of the United States Code, as to that
10 portion purchased with such coupons. The exemption provided for
11 such sales shall be inapplicable to such sales upon the effective
12 date of any federal law that removes the requirement of the
13 exemption as a condition for participation by the state in the
14 federal food stamp program;

15 13. Sales of food or food products, or any equipment or
16 supplies used in the preparation of the food or food products to or
17 by an organization which:

18 a. is exempt from taxation pursuant to the provisions of
19 Section 501(c)(3) of the Internal Revenue Code, 26
20 U.S.C., Section 501(c)(3), and which provides and
21 delivers prepared meals for home consumption to
22 elderly or homebound persons as part of a program
23 commonly known as "Meals on Wheels" or "Mobile Meals",
24 or

1 b. is exempt from taxation pursuant to the provisions of
2 Section 501(c)(3) of the Internal Revenue Code, 26
3 U.S.C., Section 501(c)(3), and which receives federal
4 funding pursuant to the Older Americans Act of 1965,
5 as amended, for the purpose of providing nutrition
6 programs for the care and benefit of elderly persons;

7 14. a. Sales of tangible personal property or services to or
8 by organizations which are exempt from taxation
9 pursuant to the provisions of Section 501(c)(3) of the
10 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
11 and:

12 (1) are primarily involved in the collection and
13 distribution of food and other household products
14 to other organizations that facilitate the
15 distribution of such products to the needy and
16 such distributee organizations are exempt from
17 taxation pursuant to the provisions of Section
18 501(c)(3) of the Internal Revenue Code, 26
19 U.S.C., Section 501(c)(3), or

20 (2) facilitate the distribution of such products to
21 the needy.

22 b. Sales made in the course of business for profit or
23 savings, competing with other persons engaged in the
24

1 same or similar business shall not be exempt under
2 this paragraph;

3 15. Sales of tangible personal property or services to
4 children's homes which are located on church-owned property and are
5 operated by organizations exempt from taxation pursuant to the
6 provisions of the Internal Revenue Code, 26 U.S.C., Section
7 501(c)(3);

8 16. Sales of computers, data processing equipment, related
9 peripherals and telephone, telegraph or telecommunications service
10 and equipment for use in a qualified aircraft maintenance or
11 manufacturing facility. For purposes of this paragraph, "qualified
12 aircraft maintenance or manufacturing facility" means a new or
13 expanding facility primarily engaged in aircraft repair, building or
14 rebuilding whether or not on a factory basis, whose total cost of
15 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)
16 and which employs at least two hundred fifty (250) new full-time-
17 equivalent employees, as certified by the Oklahoma Employment
18 Security Commission, upon completion of the facility. In order to
19 qualify for the exemption provided for by this paragraph, the cost
20 of the items purchased by the qualified aircraft maintenance or
21 manufacturing facility shall equal or exceed the sum of Two Million
22 Dollars (\$2,000,000.00);

23 17. Sales of tangible personal property consumed or
24 incorporated in the construction or expansion of a qualified

1 aircraft maintenance or manufacturing facility as defined in
2 paragraph 16 of this section. For purposes of this paragraph, sales
3 made to a contractor or subcontractor that has previously entered
4 into a contractual relationship with a qualified aircraft
5 maintenance or manufacturing facility for construction or expansion
6 of such a facility shall be considered sales made to a qualified
7 aircraft maintenance or manufacturing facility;

8 18. Sales of any interstate telecommunications services which:

9 a. entitle the subscriber to inward or outward calling
10 respectively between a station associated with an
11 access line in the local telephone system area or a
12 station directly connected to any interexchange
13 carrier's facilities and telephone or radiotelephone
14 stations in diverse geographical locations specified
15 by the subscriber, or

16 b. entitle the subscriber to private communications
17 services which allow exclusive or priority use of a
18 communications channel or group of channels between
19 exchanges;

20 19. Sales of railroad track spikes manufactured and sold for
21 use in this state in the construction or repair of railroad tracks,
22 switches, sidings and turnouts;

23 20. Sales of aircraft and aircraft parts provided such sales
24 occur at a qualified aircraft maintenance facility. As used in this

1 paragraph, "qualified aircraft maintenance facility" means a
2 facility operated by an air common carrier at which there were
3 employed at least two thousand (2,000) full-time-equivalent
4 employees in the preceding year as certified by the Oklahoma
5 Employment Security Commission and which is primarily related to the
6 fabrication, repair, alteration, modification, refurbishing,
7 maintenance, building or rebuilding of commercial aircraft or
8 aircraft parts used in air common carriage. For purposes of this
9 paragraph, "air common carrier" shall also include members of an
10 affiliated group as defined by Section 1504 of the Internal Revenue
11 Code, 26 U.S.C., Section 1504;

12 21. Sales of machinery and equipment purchased and used by
13 persons and establishments primarily engaged in computer services
14 and data processing:

15 a. as defined under Industrial Group Numbers 7372 and
16 7373 of the Standard Industrial Classification (SIC)
17 Manual, latest version, which derive at least fifty
18 percent (50%) of their annual gross revenues from the
19 sale of a product or service to an out-of-state buyer
20 or consumer, and

21 b. as defined under Industrial Group Number 7374 of the
22 SIC Manual, latest version, which derive at least
23 eighty percent (80%) of their annual gross revenues
24

1 from the sale of a product or service to an out-of-
2 state buyer or consumer.

3 Eligibility for the exemption set out in this paragraph shall be
4 established, subject to review by the Tax Commission, by annually
5 filing an affidavit with the Tax Commission stating that the
6 facility so qualifies and such information as required by the Tax
7 Commission. For purposes of determining whether annual gross
8 revenues are derived from sales to out-of-state buyers or consumers,
9 all sales to the federal government shall be considered to be to an
10 out-of-state buyer or consumer;

11 22. Sales of prosthetic devices to an individual for use by
12 such individual. For purposes of this paragraph, "prosthetic
13 device" shall have the same meaning as provided in Section 1357.6 of
14 this title, but shall not include corrective eye glasses, contact
15 lenses or hearing aids;

16 23. Sales of tangible personal property or services to a motion
17 picture or television production company to be used or consumed in
18 connection with an eligible production. For purposes of this
19 paragraph, "eligible production" means a documentary, special, music
20 video, or a television commercial or television program that will
21 serve as a pilot for or be a segment of an ongoing dramatic or
22 situation comedy series filmed or taped for network or national or
23 regional syndication or a feature-length motion picture intended for
24 theatrical release or for network or national or regional

1 syndication or broadcast. The provisions of this paragraph shall
2 apply to sales occurring on or after July 1, 1996. In order to
3 qualify for the exemption, the motion picture or television
4 production company shall file any documentation and information
5 required to be submitted pursuant to rules promulgated by the Tax
6 Commission;

7 24. Sales of diesel fuel sold for consumption by commercial
8 vessels, barges and other commercial watercraft;

9 25. Sales of tangible personal property or services to tax-
10 exempt independent nonprofit biomedical research foundations that
11 provide educational programs for Oklahoma science students and
12 teachers and to tax-exempt independent nonprofit community blood
13 banks headquartered in this state;

14 26. Effective May 6, 1992, sales of wireless telecommunications
15 equipment to a vendor who subsequently transfers the equipment at no
16 charge or for a discounted charge to a consumer as part of a
17 promotional package or as an inducement to commence or continue a
18 contract for wireless telecommunications services;

19 27. Effective January 1, 1991, leases of rail transportation
20 cars to haul coal to coal-fired plants located in this state which
21 generate electric power;

22 28. Beginning July 1, 2005, sales of aircraft engine repairs,
23 modification, and replacement parts, sales of aircraft frame repairs
24 and modification, aircraft interior modification, and paint, and

1 sales of services employed in the repair, modification and
2 replacement of parts of aircraft engines, aircraft frame and
3 interior repair and modification, and paint;

4 29. Sales of materials and supplies to the owner or operator of
5 a ship, motor vessel or barge that is used in interstate or
6 international commerce if the materials and supplies:

7 a. are loaded on the ship, motor vessel or barge and used
8 in the maintenance and operation of the ship, motor
9 vessel or barge, or

10 b. enter into and become component parts of the ship,
11 motor vessel or barge;

12 30. Sales of tangible personal property made at estate sales at
13 which such property is offered for sale on the premises of the
14 former residence of the decedent by a person who is not required to
15 be licensed pursuant to the Transient Merchant Licensing Act, or who
16 is not otherwise required to obtain a sales tax permit for the sale
17 of such property pursuant to the provisions of Section 1364 of this
18 title; provided:

19 a. such sale or event may not be held for a period
20 exceeding three (3) consecutive days,

21 b. the sale must be conducted within six (6) months of
22 the date of death of the decedent, and
23
24

1 c. the exemption allowed by this paragraph shall not be
2 allowed for property that was not part of the
3 decedent's estate;

4 31. Beginning January 1, 2004, sales of electricity and
5 associated delivery and transmission services, when sold exclusively
6 for use by an oil and gas operator for reservoir dewatering projects
7 and associated operations commencing on or after July 1, 2003, in
8 which the initial water-to-oil ratio is greater than or equal to
9 five-to-one water-to-oil, and such oil and gas development projects
10 have been classified by the Corporation Commission as a reservoir
11 dewatering unit;

12 32. Sales of prewritten computer software that is delivered
13 electronically. For purposes of this paragraph, "delivered
14 electronically" means delivered to the purchaser by means other than
15 tangible storage media;

16 33. Sales of modular dwelling units when built at a production
17 facility and moved in whole or in parts, to be assembled on-site,
18 and permanently affixed to the real property and used for
19 residential or commercial purposes. The exemption provided by this
20 paragraph shall equal forty-five percent (45%) of the total sales
21 price of the modular dwelling unit. For purposes of this paragraph,
22 "modular dwelling unit" means a structure that is not subject to the
23 motor vehicle excise tax imposed pursuant to Section 2103 of this
24 title;

1 34. Sales of tangible personal property or services to persons
2 who are residents of Oklahoma and have been honorably discharged
3 from active service in any branch of the Armed Forces of the United
4 States or Oklahoma National Guard and who have been certified by the
5 United States Department of Veterans Affairs or its successor to be
6 in receipt of disability compensation at the one-hundred-percent
7 rate and the disability shall be permanent and have been sustained
8 through military action or accident or resulting from disease
9 contracted while in such active service; provided, sales for the
10 benefit of the person to a spouse of the eligible person or to a
11 member of the household in which the eligible person resides and who
12 is authorized to make purchases on the person's behalf, when such
13 eligible person is not present at the sale, shall also be exempt for
14 purposes of this paragraph. Sales qualifying for the exemption
15 authorized by this paragraph shall not exceed Twenty-five Thousand
16 Dollars (\$25,000.00) per year per individual. Upon request of the
17 Tax Commission, a person asserting or claiming the exemption
18 authorized by this paragraph shall provide a statement, executed
19 under oath, that the total sales amounts for which the exemption is
20 applicable have not exceeded Twenty-five Thousand Dollars
21 (\$25,000.00) per year. If the amount of such exempt sales exceeds
22 such amount, the sales tax in excess of the authorized amount shall
23 be treated as a direct sales tax liability and may be recovered by
24

1 the Tax Commission in the same manner provided by law for other
2 taxes, including penalty and interest;

3 35. Sales of electricity to the operator, specifically
4 designated by the Oklahoma Corporation Commission, of a spacing unit
5 or lease from which oil is produced or attempted to be produced
6 using enhanced recovery methods, including, but not limited to,
7 increased pressure in a producing formation through the use of water
8 or saltwater if the electrical usage is associated with and
9 necessary for the operation of equipment required to inject or
10 circulate fluids in a producing formation for the purpose of forcing
11 oil or petroleum into a wellbore for eventual recovery and
12 production from the wellhead. In order to be eligible for the sales
13 tax exemption authorized by this paragraph, the oil well production
14 shall not exceed ten (10) barrels per day prior to the use of
15 enhanced recovery methods and the total content of oil recovered
16 prior to the use of enhanced recovery methods shall not exceed one
17 percent (1%) by volume. The exemption authorized by this paragraph
18 shall be applicable only to the state sales tax rate and shall not
19 be applicable to any county or municipal sales tax rate;

20 36. Sales of intrastate charter and tour bus transportation.
21 As used in this paragraph, "intrastate charter and tour bus
22 transportation" means the transportation of persons from one
23 location in this state to another location in this state in a motor
24 vehicle which has been constructed in such a manner that it may

1 lawfully carry more than eighteen persons, and which is ordinarily
2 used or rented to carry persons for compensation. Provided, this
3 exemption shall not apply to regularly scheduled bus transportation
4 for the general public;

5 37. Sales of vitamins, minerals and dietary supplements by a
6 licensed chiropractor to a person who is the patient of such
7 chiropractor at the physical location where the chiropractor
8 provides chiropractic care or services to such patient. The
9 provisions of this paragraph shall not be applicable to any drug,
10 medicine or substance for which a prescription by a licensed
11 physician is required;

12 38. Sales of goods, wares, merchandise, tangible personal
13 property, machinery and equipment to a web search portal located in
14 this state which derives at least eighty percent (80%) of its annual
15 gross revenue from the sale of a product or service to an out-of-
16 state buyer or consumer. For purposes of this paragraph, "web
17 search portal" means an establishment classified under NAICS code
18 518112 which operates web sites that use a search engine to generate
19 and maintain extensive databases of Internet addresses and content
20 in an easily searchable format; ~~and~~

21 39. Sales of tangible personal property consumed or
22 incorporated in the construction or expansion of a facility for a
23 corporation organized under Section 437 et seq. of Title 18 of the
24 Oklahoma Statutes as a rural electric cooperative. For purposes of

1 this paragraph, sales made to a contractor or subcontractor that has
2 previously entered into a contractual relationship with a rural
3 electric cooperative for construction or expansion of a facility
4 shall be considered sales made to a rural electric cooperative; and

5 40. Internet sales of wine.

6 SECTION 6. REPEALER 37 O.S. 2001, Section 549, is hereby
7 repealed.

8 SECTION 7. This act shall become effective if amendments to
9 Article XXVIII of the Oklahoma Constitution, submitted pursuant to a
10 Joint Resolution of the Oklahoma Legislature, are approved by a vote
11 of the people.

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13 51-1-6034 SD 01/16/07

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